United Nations A/69/288

General Assembly

Distr.: General
8 August 2014

Original: English

Sixty-ninth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Moratorium on the use of the death penalty

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly pursuant to its resolution 67/176. It discusses trends towards the abolition of the death penalty and the establishment of moratoriums on executions. The report also reflects on the application of international standards relating to the protection of the rights of those facing the death penalty and discusses various international and regional initiatives for the implementation of resolution 67/176.

* A/69/150.

14-58956 (E) 090914

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I. Introduction

1. In resolution 67/176, the General Assembly requested the Secretary-General to report on the implementation of moratoriums on the use of the death penalty at its sixty-ninth session. On the basis of that request, the Office of the United Nations High Commissioner for Human Rights (OHCHR), on behalf of the Secretary-General, sent a note verbale to all Member States and observers on 18 March 2014, requesting the relevant information. Departments and offices of the Secretariat, international and regional organizations, inter-governmental bodies, the bodies and organizations of the United Nations system, national human rights institutions and non-governmental organizations also contributed to the present report.[1]

2. In the present report, the Secretary-General draws the attention of the General Assembly to his recent reports(and A/HRC/24/18, and A/HRC/27/ 23 and Corr.1) on the question of the death penalty, submitted to the Human Rights Council. He also draws attention to the report of the United Nations High Commissioner for Human Rights (A/HRC/27/26), submitted pursuant to Council decision 22/117, on the high-level panel discussion of the Human Rights Council held on 5 March 2014 on the question of the death penalty.[2]

3. The present report covers the period from January 2013 to June 2014. The first section of the present report reviews the situation regarding the global use of the death penalty, including trends towards universal abolition and the establishment of moratoriums. The second section discusses the application of international norms and standards relating to the protection of the rights of those facing the death penalty. The third section outlines international, regional and national initiatives that promote the universal abolition of the death penalty.

II. Data on the use of the death penalty

4. In its resolution 67/176, the General Assembly called upon all States to "make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty".

5. As noted by the Secretary-General in his recent reports to the Human Rights Council, up-to-date and accurate global figures on the application of the death penalty are difficult to obtain. Some Governments are reluctant to release information on the number and other details of individuals executed. Some States continue to classify the data on the use of the death penalty as a State secret, the disclosure of which amounts to a criminal offence. In countries affected by conflict, the problem of transparency is further compounded, and it may be impossible to obtain execution-related information.

6. During the reporting period, the human rights treaty bodies continued to call upon States parties to take all measures necessary to ensure the accessibility of

[1] The original contributions are on file with the Secretariat and are available for consultation.

[2] See also the annex to note verbale A/67/841, in which 47 Member States expressed their objection to imposing a moratorium on the use of the death penalty or its abolition.

information on the death penalty. For instance, the Committee against Torture expressed deep concern, inter alia, over the unnecessary secrecy and uncertainty surrounding executions in Japan (CAT/C/JPN/CO/2, para. 15). It further noted that refusing to provide advance notice of the date and time of execution to convicted persons and their family members was a clear human rights violation. Several special procedures mandate holders of the Human Rights Council also urged States, including Belarus[3] and Iraq,[4] to refrain from secret executions.

III. Developments since the adoption of General Assembly resolution 67/176

7. Approximately 160 of the 193 Member States of the United Nations have abolished the death penalty or introduced moratoriums, either in law or in practice.

8. Since the adoption of General Assembly resolution 67/176 in December 2013, several States have undertaken initiatives towards the abolition of the death penalty. Benin repealed the death penalty from its criminal procedure code; Equatorial Guinea established a temporary moratorium; Pakistan reintroduced its moratorium; Nigeria confirmed the continuation of its moratorium at the federal level; and the President of the United Arab Emirates ordered a general stay on executions. In the United States of America, Maryland became the eighteenth State in the country to abolish the death penalty and Washington State introduced a moratorium on the death penalty.

9. During the reporting period, several initiatives restricted the use of the death penalty. For instance, Antigua and Barbuda adopted the Offences against the Person (Amendment) Act to remove the mandatory imposition of the death penalty for murder.[5] Bangladesh abolished the death penalty for children through the enactment of the 2013 Children Act.[6] China amended its criminal procedure law to require that all interrogations of individuals potentially facing the death penalty or life imprisonment be recorded or videotaped, and authorized the Supreme People's Court to review all cases where death sentences had been issued. China's national human rights action plan for 2012 to 2015 includes measures aimed at strengthening safeguards in all death penalty cases. Thailand reported that its Ministry of Justice was studying the possibility of the abolition of the death penalty. Sri Lanka appointed a special committee to review its penal code, make recommendations regarding the death penalty and examine the possibility of commuting death sentences to life imprisonment. Cote d'Ivoire also established a committee to revise the penal code and the criminal procedure code with the aim of abolishing the death penalty.

10. The judicial authorities in some States also continued to restrict the application of the death penalty by introducing judicial guidelines for capital cases. For

[3] OHCHR press release, "Halt further executions — UN expert calls on Belarus for an immediate death sentence moratorium". Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14537&LangID=E.

[4] OHCHR press release, "UN expert calls for immediate halt to executions and surrounding secrecy in Iraq". Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12395&LangID=E.

[5] See http://laws.gov.ag/acts/2013/a2013-4.pdf.

[6] Section 52 of Act No. 24 of 2013 states: "Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment".

instance, the Supreme Court of Uganda issued the Sentencing Guidelines for Courts of Judicature stipulating, inter alia, that courts in Uganda "may only pass a sentence of death in exceptional circumstances in the 'rarest of the rare' cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate". The Supreme Court of India adopted guidelines on clemency and the treatment of death row prisoners.[7]

11. Some trends in the gradual abolition of the death penalty were noted in the discussions and interactive dialogues held by the Human Rights Council, in particular during the universal periodic review process. At the fifteenth session of the universal periodic review held from 21 January to 1 February 2013, Botswana highlighted that it was working towards the abolition of mandatory death sentences and would undertake awareness-raising campaigns with a view to raising issues relating to the death penalty (see A/HRC/23/7 and Corr.1, para. 92). Barbados supported the recommendations, inter alia, to follow up on the request to remove mandatory death sentences for murder and treason and to promote open debates on the death penalty (A/HRC/23/11/Add.1, para. 18). Tonga stated that it had instituted a de facto moratorium in 1982 and that its guiding policy only permitted the death penalty, in the context of murder, to be applied in the "rarest of rare cases" (A/HRC/23/4, para. 32, and A/HRC/23/4/Add.1, para. 14).

12. Bahamas stated that, in 2006, its Privy Council had ruled that Bahamian law prescribed a non-mandatory death sentence. In 2012, the Privy Council had imposed further judicial restrictions by ruling that the death penalty should only be imposed where the offence was deemed to be the "worst of the worst" (A/HRC/23/8, para. 20). The United Arab Emirates accepted the recommendations to respect minimum human rights standards in the use of the death penalty and to reduce the number of crimes for which the death penalty could be imposed (A/HRC/23/13/Add.1, para. 5 (a)). Mali accepted the recommendations to establish a moratorium and to seek out measures that supported the complete elimination of the death penalty (A/HRC/23/6, paras. 111.17 and 111.18).

13. At the sixteenth session of the universal periodic review held from 22 April to 3 May 2013, Burkina Faso confirmed that it had extended the moratorium on the death penalty and had accepted the recommendation to prohibit the application of the death penalty to minors (A/HRC/24/4, paras. 35 and 135.11). Cameroon noted that only one execution had been carried out since 1982 and that it would eventually abolish the death penalty, but that it was important to take into account the opinion of its electorate (A/HRC/24/15, para. 58). The Russian Federation confirmed that there had been a legal prohibition on the imposition and application of the death penalty for more than 15 years and that it had also extended the moratorium on the death penalty (A/HRC/24/14, paras. 33, 67 and 119). Bangladesh stated that the death penalty was restricted to the most heinous crimes and could not be imposed on children under 18 (A/HRC/24/12, para. 62). Cuba indicated it had instituted a de facto moratorium on the death penalty (A/HRC/24/16, para. 60). China highlighted that, although it retained the death penalty, it was committed to exercising strict caution in reducing its application. Furthermore, China accepted the recommendations to continue to strictly observe the stipulations on evidence used to examine and decide death penalty cases and to adopt stricter standards (A/HRC/25/5, paras. 84 and 186.110).

[7] India, *Shatrughan Chauhan and Anr v. Union of India and Ors*, Writ Petition (Criminal) No. 55 of 2013, decided on 21 January 2014.

14. At the seventeenth session of the universal periodic review, held from 21 October to 1 November 2013, the Central African Republic stated that it had instituted a moratorium on the death penalty and had drafted a bill to abolish the death penalty (A/HRC/25/11, paras. 14, 35, and 63). Malaysia reported that its Attorney-General's Chambers had undertaken initiatives to conduct in-depth research, scheduled for completion by the end of 2014, on the death penalty, (A/HRC/25/10, para. 67). The Comoros stated that its criminal code no longer contained a death penalty and that there had been no executions since 2009 (A/HRC/26/11, para. 10). Yemen indicated that it only imposed the death penalty for the most serious crimes and that it had accepted the recommendation to review its death penalty legislation to ensure full compliance with the International Covenant on Civil and Political Rights, particularly the provision prohibiting the application of the death penalty to minors. Yemen also accepted the recommendation to legally prohibit death by stoning and to reduce the number of crimes that were punishable by the death penalty (A/HRC/26/8, paras. 115.54 and 115.55).

15. At the eighteenth session of the universal periodic review, held from 27 January to 7 February 2014, Viet Nam stated that since 2009 it had been reducing the number of crimes subject to the death penalty and that it would continue to do so (A/HRC/26/6, para. 59). It accepted the recommendation to continue reform efforts towards the eventual abolition of the death penalty (A/HRC/26/6, paras. 143.5 and 143.95).

16. At the nineteenth session of the universal periodic review held from 28 April to 9 May 2014, Dominica confirmed that it had instituted a self-imposed moratorium on the use of the death penalty in 1986. However, popular sentiment supported the reintroduction of death sentences for murder (A/HRC/27/9, para. 15). Equatorial Guinea indicated its commitment to observing the existing moratorium and to ensuring the commutation of death sentences (A/HRC/15/4/Add.1, para. 24).

IV. Ratification of the relevant international and regional instruments

A. Second Optional Protocol to the International Covenant on Civil and Political Rights

17. In a statement delivered at the high-level discussion of the Human Rights Council on the question of the death penalty, held during its the twenty-fifth session, on 5 March 2014, the Secretary-General called upon States that had not yet done so to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. The Secretary-General expressed his sincere hope to see increased ratification of the Protocol since 2014 marked the twenty-fifth anniversary of the Protocol (see A/HRC/27/26, para. 6).

18. In a statement delivered in June 2014, the United Nations High Commissioner for Human Rights outlined reasons to aim for the universal ratification of the Second Optional Protocol to the International Covenant on Civil and Political

Rights.[8] First, adopting the Protocol had national significance by obliging States parties to take all necessary measures to abolish the death penalty within their jurisdictions. Second, ratification of the Protocol protects against regression; States parties to the Protocol were obliged to irrevocably abolish the death penalty irrespective of any changes in government or political situations, thus preventing the reintroduction of capital punishment in the future. Third, adopting the Protocol had international significance. It opened the way to independent and international supervision to ensure that abolitionist countries complied with their obligations. Furthermore, the Second Optional Protocol was a means for States to establish their abolitionist stance through international law. Having a wide-scale ratification of the Second Optional Protocol helped to generate the "critical mass" and momentum needed to ultimately outlaw the death penalty under international law.

19. As at July 2014, 81 States had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty. During the reporting period, Bolivia (Plurinational State of), Gabon, Guinea-Bissau, El Salvador, Latvia, and Poland acceded to the Protocol, and Angola signed it.[9]

20. States continued to use the universal periodic review process of the Human Rights Council to promote the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights. During the reporting period, several States, including Burkina Faso (A/HRC/24/4, para. 11), the Central African Republic (A/HRC/25/11, paras. 104.2-104.11), the Congo (A/HRC/25/16, paras. 111.9-111.18), Cambodia (A/HRC/26/16, paras. 118.1 and 118.2), the Comoros (A/HRC/26/11, paras. 110.1-110.10), Côte d'Ivoire (A/HRC/27/6, paras. 127.8 and 127.9) and Equatorial Guinea (A/HRC/27/13, para. 134.48) accepted recommendations to ratify or accede to the Second Optional Protocol.

21. The Human Rights Committee also continued to play an important role in encouraging States to ratify and implement the Second Optional Protocol. For instance, while examining the initial report of Sierra Leone, the Committee recommended to Sierra Leone that it expedite its efforts to abolish the death penalty and to ratify the Second Optional Protocol (CCPR/C/SLE/CO/1, para. 18).

B. Regional instruments

22. With regard to regional instruments, during the reporting period, Poland ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances. The African Commission on Human and Peoples' Rights developed a draft additional protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty. Reportedly, the draft protocol has been submitted to the African Union for adoption later in 2014.

[8] The statement was delivered by the Deputy High Commissioner at a side-event on the occasion of the twenty-fifth anniversary of the Second Optional Protocol, held on 12 June 2014, which was organized by the International Commission against the Death Penalty, in cooperation with a group of States and the World Coalition against the Death Penalty.

[9] The full list of ratifications is available from https://treaties.un.org.

V. Protection of the rights of those facing the death penalty

23. Algeria, Bahrain, Egypt, Iraq, Kuwait, Libya, Qatar, the Sudan, the Syrian Arab Republic and Trinidad-Tobago provided information regarding the legal guarantees and safeguards provided in the capital cases within their respective jurisdictions. Such guarantees and safeguards included, inter alia, the right to public trial, the right to legal presentation and counsel, including the provision of a counsel financed by the State, respect for the principle of presumption of innocence, the right to appeal, freedom from torture and the prohibition of the death penalty against minors, pregnant women and/or persons with mental or intellectual disabilities.[10]

24. Trends with regard to the protection of the rights of those facing the death penalty can be gleaned from recent annual reports of the Secretary-General on the use of the death penalty, submitted to the United Nations Human Rights Council (A/HRC/18/20 and A/HRC/21/29 and Corr.1). Some of the key trends are outlined below.

A. Limiting the use of the death penalty to the "most serious crimes"

25. In accordance with article 6, paragraph 2, of the International Covenant on Civil and Political Rights, States that have not yet abolished the death penalty may only impose it for the "most serious crimes". In international human rights jurisprudence, that term has been interpreted as allowing the death penalty to be applied only to the crime of murder or intentional killing (see E/2010/10, paras. 56-68).

26. In his recent report to the Human Rights Council, the Secretary-General reported that there were currently 32 States or territories that prescribed the death penalty for "drug offences" (A/HRC/21/29, para. 25). During the reference period, hundreds of people were reportedly executed for "drug offences", particularly in the Islamic Republic of Iran (A/HRC/25/61, paras. 84-87). He indicated that the human rights treaty bodies continued to address the issue of the use of the death penalty for drug-related crimes. For instance, the Human Rights Committee recommended that Indonesia review its legislation to ensure that crimes involving narcotics were not punishable by death (CCPR/C/IDN/CO/1, para. 10). In a note verbale issued in March 2014, the International Narcotics Control Board encouraged States that still imposed the death penalty for drug-related offences to abolish that punishment.

27. The application of the death penalty for overly broad and vaguely defined terrorist offences remains a serious concern, particularly in cases where such acts did not meet the threshold of "most serious crimes", and could amount to violations of article 6 of the International Covenant on Civil and Political Rights. Furthermore, several States continued to impose and carry out the death penalty in connection with actual or purported engagement in consensual sexual acts, such as "adultery", "sodomy" and "consensual adult homosexual conduct" (A/HRC/21/29, para. 58). The Human Rights Committee expressed concerns that in Mauritania, in direct violation of the provisions of the International Covenant on Civil and Political Rights, homosexuality was a crime punishable by death. The Committee recommended that Mauritania decriminalize homosexuality (CCPR/C/MRT/CO/1, para. 8). While reviewing the second periodic report of the Islamic Republic of Iran,

[10] Submissions of States are on file with the Secretariat and are available for consultation.

the Committee on Economic, Social and Cultural Rights expressed concern over the country's criminalization of consensual same-sex sexual activity, where convicted persons could be subject to the death penalty. The Committee recommended that the Islamic Republic of Iran repeal or amend all legislation that could result in the discrimination, prosecution or punishment of people on the basis of their sexual orientation or gender identity (E/C.12/IRN/CO/2, para. 7).

28. In some countries, conversion from or the renunciation of Islam is considered apostasy and a capital crime. The death penalty has also been extended to cases of blasphemy. According to international human rights jurisprudence, none of those crimes meets the threshold of "most serious crimes." (CCPR/C/79/Add.85, para. 8). In May 2014, a group of United Nations human rights experts expressed concerns after a pregnant woman in the Sudan was sentenced to death and 100 lashes for marrying a Christian man and for the crime of apostasy. They stated, inter alia, that according to international law the death penalty might only be imposed for the most serious crimes, if at all. Choosing and/or changing one's religion was not a crime at all; on the contrary, it was a basic human right.[11]

B. Fair trial guarantees

29. In accordance with General Comment No. 32 of the Human Rights Committee, on the right to equality before courts and tribunals and to a fair trial, the imposition of the death sentence upon the conclusion of a trial that has not respected the provisions of article 14 of the International Covenant on Civil and Political Rights constitutes a violation of the right to life. Furthermore, forcing an individual to make or sign, under duress, a confession admitting guilt violates article 7 (prohibiting torture and inhuman, cruel or degrading treatment) and article 14, paragraph 3 (g) (prohibiting compulsion to testify against oneself or confess guilt) of the International Covenant on Civil and Political Rights (CCPR/C/GC/32, paras. 59 and 60).

30. In his reports to the Human Rights Council, the Secretary-General indicated that in some States where individuals were sentenced to death or executed, the death penalty was imposed following proceedings that might not have met international fair trial standards. In many cases, the sentences were based on "confessions" that were allegedly extracted through torture or other ill-treatment. During the reporting period, a new phenomenon of sentencing large groups of individuals in mass trials emerged and led to major concerns that such mass trials violated international human rights standards for fair trial guarantees and other safeguards. In particular, those trials were marred by procedural irregularities, including lack of adequate and timely access to lawyers and instances of trials in absentia. Furthermore, the Secretary-General indicated that the exact charges against each defendant were not clear, given that, in many cases, they were not individually read out in court. The courts also did not adhere to the presumption of innocence. Pursuant to General Comment No. 32 of the Human Rights Committee, the presumption of innocence, which was fundamental to the protection of human rights, imposed on the prosecution the burden of proving the charge, guaranteed that no guilt could be presumed until the charge had been proved beyond reasonable doubt, ensured that the accused had the benefit of doubt and

[11] OHCHR press release, "UN rights experts condemn death sentence against pregnant mother for apostasy and adultery". Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14618&LangID=E.

required that persons accused of a criminal act must be treated in accordance with that principle (A/HRC/27/23 and Corr.1, paras. 43-53).

C. Clemency, pardon or commutation

31. Pardon or commutation of death sentences constitutes positive steps in the process of the abolition of the death penalty. Article 6(4) of the International Covenant on Civil and Political Rights states that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. During the reference period, collective pardons or commutations of death sentences were recorded in a number of States. In January 2013, Mali reported that death sentences were systematically commuted to life (see A/HRC/23/6, para. 15). In May 2013, in applying article 51 of Zambia's national constitution, the President of Zambia commuted 113 death sentences to life imprisonment.[12] With Presidential Pardon Order No (1/2014) of 2 January 2014, the President of Myanmar commuted all death sentences to life imprisonment. In February 2014, the President of Cameroon commuted death sentences to life imprisonments. In the United States, the State of Alabama passed legislation in April 2013 that allowed the Board of Pardons and Paroles to grant posthumous pardons in cases involving racial or social injustice.

32. In several States, judicial authorities also took the initiative to commute death sentences to a lesser punishment. For instance, since January 2014, the Supreme Court of India has issued a series of decisions commuting death sentences on the grounds of delay in the disposal of mercy petitions. The Court held that such delays caused psychological torture, which could lead to mental illness that would thus justify commutation.[13] The Supreme Court of India also issued a judgement that "poverty, socio-economic, psychic compulsions, undeserved adversities in life" constituted new mitigating factors to be considered by courts in commuting a death sentence to life imprisonment.[14] In 2013, the Ugandan judiciary held special mitigation sessions for the beneficiaries of the 2005 landmark judgment *Kigula and 416 Others v. Attorney General of Uganda*. In the *Kigula* judgment, the Constitutional Court of Uganda found that the mandatory nature of the death penalty was unconstitutional because it did not provide the Court with the opportunity to take into account individual mitigating circumstances. In 2009, the Ugandan Supreme Court upheld the decision of the Constitutional Court and affirmed that the mandatory death penalty and excessive delay on death row were unconstitutional. Accordingly, the Supreme Court held that the inmates whose death sentences were not confirmed by the Supreme Court should be re-sentenced by the High Court. As of December 2013, the mitigation hearings resulted in the release of 22 people and the commutation to lesser punishments for approximately 300 prisoners on death row.

33. In 2013, the High Court of Singapore began reviewing the cases of 32 prisoners who had been mandatorily sentenced to death for drug-related offences

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[12] http://www.handsoffcain.info/archivio_news/201305.php?iddocumento=17305542&mover=0.

[13] India, *Shatrughan Chauhan and Anr. v. Union of India and Ors*, Writ Petition (Criminal) No. 55 of 2013 (judgement issued on 21 January 2014); *Shriharan and Suthendraraja and Perarivalan v. Union of India and Others*, Supreme Court of India, 18 February 2014; *Devender Pal Singh Bhullar v. State (NCT) of Delhi* (2013) 6 SCC 195.

[14] India, *Sunil Damodar Gaikwad v. State of Maharashtra*, Criminal Appeal Nos. 165-166 of 2011.

and murder, following the adoption of the Penal Code (Amendment) Act 2012 and the Misuse of Drugs (Amendment) Act 2012, which allowed judicial discretion in sentencing under certain circumstances. Several death sentences were commuted to life imprisonment and other lesser punishment.

34. The authorities in the Islamic Republic of Iran reported that the payment of "blood money" spared 358 Iranians from execution between March 2013 and March 2014. Under the Islamic sharia law of *diya* (restitution), the victim's family is given a choice to either forgive the accused and not demand punishment, or demand a payment (*diya*) as a punishment for the crime committed. The use of a similar form of pardon system has been reported in Kuwait, Pakistan, Saudi Arabia and the United Arab Emirates.

D. Prohibition of extradition, expulsion or deportation in death penalty cases

35. Pursuant to international human rights jurisprudence, an individual may not be extradited, expelled or deported to a country where there is a necessary and forcible threat that the International Covenant on Civil and Political Rights will be violated. During the reporting period, international, regional and national mechanisms addressed the prohibition of extradition, expulsion or deportation of individuals to a third country where they might face the death penalty. For instance, the Human Rights Committee welcomed the actions of the judiciary in Macao, China, in blocking the transfer of a person to China. However, the Committee voiced concerns that, despite its previous recommendation to that effect (CCPR/C/79/Add.115, para. 14), Macao, China, had not adopted any regulation regarding the transfer of offenders from Macao, China, to China to protect the persons concerned from the risk of the death penalty or ill-treatment upon transfer (CCPR/C/CHN-MAC/CO/1, para. 11).

36. The new European Union guidelines on the death penalty, adopted in April 2013, reaffirmed that, in accordance with article 19(2) of the European Union Charter of Fundamental Rights, no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. In April 2013, the Governments of the United Kingdom of Great Britain and Northern Ireland and Morocco signed a treaty on extradition. The treaty stipulates, inter alia, that the requested State may refuse the extradition unless the requesting State gives sufficient assurances to the requested State that the death penalty shall not be imposed.[15]

37. In December 2013, the European Court of Human Rights held public hearings in the cases of *Al-Nashiri v. Poland* (Application No. 28761/11) and *Husayn (Abu Zubaydah) v. Poland* (Application No. 7511/13). Both applicants alleged that they were victims of "extraordinary renditions" by the United States Central Intelligence Agency because, despite a real risk that, inter alia, they would be subjected to the death penalty in a trial by a United States military commission, they were still apprehended and extrajudicially transferred, with the knowledge of the Polish authorities, to a secret Polish detention site, for the purpose of interrogation by a United States military commission.

[15] See www.gov.uk/government/uploads/system/uploads/attachment_data/file/226638/8682.pdf.

38. In South Africa, the Constitutional Court decided that the Government was not entitled to deport or extradite a person charged with a capital offence in a country seeking his extradition, after having sought and been refused a written assurance from the State requesting extradition that the death penalty would not be imposed, or, if imposed, would not be carried out.[16]

E. Methods of execution

39. The methods of execution vary among States/areas that continue to impose the death penalty. During the reporting period, the following methods of executions were used: beheading (Saudi Arabia), electrocution (United States), hanging (Afghanistan, Bangladesh, Botswana, India, Iran (Islamic Republic of), Iraq, Japan, Kuwait, Malaysia, Nigeria, South Sudan, Sudan and State of Palestine (Gaza)), lethal injection (China, Viet Nam and United States), and shooting (China, Indonesia, Democratic People's Republic of Korea, Saudi Arabia, Somalia, Yemen and Taiwan Province of China).

40. In Papua New Guinea, legal execution methods were changed to include lethal injection, electrocution, firing squad and asphyxiation, in addition to hanging. In Viet Nam, an amendment of the criminal verdict enforcement law came into effect on 27 June 2013, which allows drugs, sourced from outside the European Union or manufactured in the country, to be used in lethal injections for carrying out executions. Following the adoption of the law, executions were resumed and several people were reportedly executed by lethal injection in August 2013.

41. Following a shortage of available drugs normally used in lethal injection protocols and amid the various restrictions imposed by foreign Governments, the European Union, pharmaceutical companies, a number of states in the United States (e.g., Arkansas, California, Florida, Louisiana, Montana, North Carolina and Ohio) amended their execution procedures to include a one-drug protocol and/or to allow new chemicals to be used. Reportedly, two approaches have emerged in the search for new executions methods by lethal injection in the United States: (a) some states have adopted new, experimental executions protocols using untested manufactured drugs; (b) some other states have turned to compounded drugs. Under both approaches, the use of those untested means of execution has demonstrably increased the risks of such executions amounting to cruel and unusual punishment.

42. In July 2013, an execution was stopped in Georgia, United States, hours before it was to be carried out, in connection with ongoing litigation over the state's lethal injections secrecy act.[17] The act makes the identities of companies and individuals who manufacture and supply lethal injection drugs, and the identities of the doctors hired by the state to oversee executions, a "state secret" shielded from disclosure to the public, the media and even the judiciary.

43. In its concluding observations on the periodic report of the United States, the Human Rights Committee noted with concern reports about the administration of untested lethal drugs to execute prisoners and the withholding of information on

[16] *Minister of Home Affairs and Others v. Tsebe and Others; Minister of Justice and Constitutional Development and Another v. Tsebe and Others*: Case CCT 110/11 and CCT 126/11, [2012] ZACC 16; judgement, July 2012.

[17] Georgia law, House Bill 122, passed in March 2013.

such drugs in some states. The Committee recommended that the United States ensure that lethal drugs used for executions only originate from legal, regulated sources that are approved by the US Food and Drug Administration (CCPR/C/USA/CO/4).

44. After the execution of a death row prisoner in Oklahoma, United States in May 2014, OHCHR expressed concerns about the suffering endured by persons during their executions, as it may amount to cruel, inhuman and degrading treatment, in violation of international human rights law.[18] Subsequently, the Governor of Oklahoma suspended executions, and the Office of the Attorney General of the United States, following a presidential order, initiated an investigation into state-level execution protocols and related policy issues.

45. During the reporting period, at least several States continued to retain stoning as a method of execution; and judiciaries in several States continued to issue sentences of death by stoning, although reportedly none were carried out. That method of execution has been largely prescribed for the crime of "adultery" (*zina*) and "homosexual acts", neither of which meets the threshold of "most serious crimes". Stoning breaches the International Covenant on Civil and Political Rights and norms prohibiting torture and inhuman treatment. During the examination of the fifth periodic report of Yemen under the International Covenant on Civil and Political Rights, the Human Rights Committee recommended that it officially abolish stoning as a method of execution (see CCPR/CO/84/YEM, para. 15).

F. Prohibition of the use of the death penalty against children, persons with mental or intellectual disabilities and other vulnerable groups

46. In his recent report to the Human Rights Council (A/HRC/27/23 and Corr.1, paras. 58-61), the Secretary-General reported that the legislation of 15 States allowed the application of the death penalty to children. During the reporting period, in violation of articles 6 of the International Covenant on Civil and Political Rights and 37 of the Convention on the Rights of the Child, several States carried out the execution of individuals accused of crimes committed while under 18 years of age.

47. In accordance with international human rights standards, the death penalty should not be imposed on persons with mental or intellectual disabilities (see E/2010/10). The judiciaries of India, Japan and United States issued rulings that prohibited executions of persons with mental or intellectual disabilities (see A/HRC/27/23 and Corr.1, paras. 62-64). Qatar reported that under its penal code, mental disability in partial incapacity is a mitigating factor while total mental incapacity or disability precludes criminal responsibility, and the use of the death penalty against such a person is prohibited. Furthermore, the authorities of Qatar are obliged to provide medical support to such persons.

[18] See www.un.org/apps/news/story.asp?NewsID=47706.

VI. International, regional and national initiatives to implement General Assembly resolution 67/176

A. Human Rights Council

48. During the reporting period, the Human Rights Council continued to address the question of the death penalty. Pursuant to its decision 22/117, adopted in March 2013, the Council held a high-level panel discussion during its twenty-fifth session, on the question of the death penalty. The aims of the panel discussion were to exchange views on advances, best practices and challenges relating to the abolition of the death penalty and the introduction of a moratorium, and allow an exchange of views relating to national debates on, or processes aiming at, the abolition of the death penalty. Panellists and delegates emphasized the responsibility of the international community for moving universal abolition of the death penalty forward. They highlighted that discussions on the death penalty should continue at both the national and international levels and engage all segments of the society, including innocent people who had suffered wrongful convictions. They concluded that there should be a sharing of experiences and efforts at the national, regional and international levels.

49. On 25 June 2014, the Human Rights Council adopted resolution 26/2 on the question of the death penalty in which it strongly condemned the fact that the use of the death penalty lead to violations of the human rights of those facing the death penalty and of other affected persons. The Council further urged States that had not yet abolished the death penalty to protect the rights of those facing the death penalty. The Council also decided to convene biennial high-level panel discussions to further exchange views on the question of the death penalty, the first of which is to be held at the twenty-eighth session of the Council and will address regional efforts aiming at the abolition of the death penalty and related challenges. The Council requested that the Secretary-General dedicate the 2015 supplement to his quinquennial report on capital punishment to the theme of the consequences related to the imposition and application of the death penalty on the enjoyment of the human rights by those facing the death penalty and other affected persons.

50. Special procedures mandate holders of the Human Rights Council continued to monitor the application of international human rights standards for the protection of rights of those facing the death penalty. During the reporting period, the Special Rapporteur on extrajudicial, summary or arbitrary executions and other Human Rights Council special procedures mandate holders urged several States, including Belarus, Egypt, the Democratic People's Republic of Korea, Iran (Islamic Republic of), Iraq and Papua New Guinea to maintain stringent respect for due process and fair trial guarantees in death penalty cases (A/HRC/27/23, para 49).

B. United Nations High Commissioner for Human Rights

51. The United Nations High Commissioner for Human Rights continued to advocate and advance the abolition of the death penalty, under her mandate to promote and protect the enjoyment and full realization by all people of all human rights. The OHCHR management plan for 2014-2017 includes a specific strategic focus aimed at increasing the number of States that have abolished the death penalty

and/or, pending abolition, increasing the compliance of States that still use the death penalty with international human rights norms and standards. OHCHR is contributing to this result by implementing several strategic interventions, such as advocating for the ratification and implementation of the Second Optional Protocol to the International Covenant on Civil and Political Rights, providing legal and policy advice to States and other stakeholders on the establishment of moratoriums and assisting States in the effective implementation of international norms and standards. OHCHR will organize a high-level event on leadership and "moving away from the death penalty" during the gathering of Heads of States at the sixty-ninth session of the General Assembly in September 2014.

52. During the reporting period, in cooperation with Italy, Chile, the Philippines, Thailand and the European Union, OHCHR organized a series of global and regional events on "moving away from the death penalty". During the events, discussions were held on wrongful convictions, deterrence and public opinion, discriminatory practices in the use of the death penalty, best practices and challenges in the implementation of moratoriums, and the abolition of the death penalty in South-East Asia. OHCHR also continued to monitor the application of the death penalty. Concerns were expressed through press releases and communications to the relevant authorities of several States regarding the imposition of death sentences in violation of international standards guaranteeing the protection of the rights of those facing the death penalty. OHCHR also continued its advocacy work with States retaining the death penalty, notably for the establishment of a moratorium pursuant to General Assembly resolution 67/176. In June 2013, at the fifth World Congress against the Death Penalty, the United Nations High Commissioner for Human Rights urged all States that had resumed executions or that continued to impose the death penalty to immediately stop said regression in human rights protection and to impose moratoriums (A/HRC/25/19, para. 34).

C. United Nations Children's Fund

53. The United Nations Children's Fund (UNICEF), in partnership with States and other stakeholders, has applied various approaches to address the problem of the use of the death penalty against minors. UNICEF in Yemen advocated an immediate suspension of the use of the death penalty for crimes committed by persons under 18 years of age. It submitted a list of 52 cases of death row prisoners, who were sentenced to death for crimes committed before the age of 18, to the Office of the President of Yemen with a request to suspend all executions in those cases. The Office subsequently instructed the relevant bodies to suspend the executions and also asked Yemen's Supreme Court to form a committee to review thee cases and make recommendations. UNICEF in Yemen also supported the establishment of a specialized forensic committee that utilizes the latest scientific methods to determine the most accurate age of death row prisoners.

54. In the Islamic Republic of Iran, the 2013 adoption of a revised penal code (specifically its child-related provisions that prohibit the application of the death penalty to children in certain cases) created a more enabling environment for the implementation of juvenile justice standards for children. In partnership with the judiciary of the Islamic Republic of Iran, UNICEF supported the implementation of the child-related provisions of the revised penal code. UNICEF noted, however, that it was still too early to assess the extent to which the revised penal code had

contributed to reducing the number of capital sentences issued in cases involving juveniles. It recommended that the Islamic Republic of Iran, prior to the adoption of the new penal code, provide a special review of the cases of those children who had been sentenced to death. In the Sudan, UNICEF supported the National Council for Child Welfare in conducting a rapid assessment to verify whether those sentenced to death or executed were under the age of 18.

D. Special Representative of the Secretary-General on Violence against Children

55. During the reporting period, the Special Representative of the Secretary-General on Violence against Children continued her global advocacy for the prevention and elimination of all forms of violence against children, including the death penalty. The Special Representative placed special emphasis on the enactment of national legislation banning capital punishment and all forms of violence against children. The abolition of the death penalty was also identified as a critical area of concern in the joint report of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on the prevention of and responses to violence against children within the juvenile justice system, which has been submitted to the Human Rights Council (A/HRC/21/25).

56. In her message to the Human Rights Council in September 2013, the Special Representative of the Secretary-General on Violence against Children emphasized that the sentencing to death or the execution of a parent compromised enjoyment by children of a wide spectrum of child rights. In that regard, she emphasized the critical importance of ensuring that urgent attention be given to the situation of children whose parents were facing the death penalty. Such children should be provided with a protective environment and adequate support, including access to services and measures that would assist with their recovery and reintegration (A/HRC/25/33, para. 8).

E. International Commission against the Death Penalty

57. During the reporting period, the International Commission against the Death Penalty, with the support of a group of States, undertook a number of activities pursuant to General Assembly resolution 67/176 in order to reinforce and consolidate the global trend towards the abolition of capital punishment. The Commission released a report entitled "How States abolish the death penalty", which reviews the processes towards the abolition of capital punishment by analysing the experiences of 13 States: Argentina, Cambodia, France, Haiti, Kyrgyz Republic, Mexico, Mongolia, Philippines, Rwanda, Senegal, South Africa, Turkey and United States (States of Connecticut and New Mexico). Drawing on those lessons and experiences, the report provides guidance to States on how to abolish the death penalty.

58. The International Commission against the Death Penalty and the Inter-Parliamentary Union jointly organized a panel discussion on the theme "Parliamentarians: a critical force in promoting the abolition of the death penalty". The Commission also undertook missions to Barbados, Jamaica, Lebanon,

Suriname, Tajikistan, Trinidad and Tobago and the United States, where it conducted consultations with State authorities and civil society organizations to advance the abolition of the death penalty.

F. European Union initiatives

59. The European Union relies on diplomacy and cooperation for its work towards the abolition of the death penalty. The new European Union guidelines on the death penalty adopted in 2013 direct the heads of mission of the member States of the European Union to report regularly on the application of the death penalty in third countries and to regularly update their respective European Union human rights country strategies. The guidelines reiterate the strong opposition of the European Union to the death penalty and support for its full abolition. They also clarify the minimum standards to which States that still maintain the death penalty have to adhere, including the definition of "most serious crimes" and the notion that the death penalty must not be imposed for "non-violent acts". They have added economic, political and drug-related crimes to the list of offences for which the application of the death penalty should be prohibited.[19]

60. The issue of the death penalty was also systematically raised in numerous dialogues and consultations on human rights held by the European Union with third countries. The European Union also continued to raise its opposition to the death penalty in all relevant forums, including at the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe. Through the European Instrument for Democracy and Human Rights, the European Union supports the efforts of abolitionist civil society organizations in retentionist States.

G. African Commission on Human and Peoples' Rights

61. The African Commission on Human and Peoples' Rights convened the Continental Conference on the Abolition of the Death Penalty in Africa in July 2014 in Benin, in cooperation with the Benin authorities, and with the participation of high-level representatives of several member States of the African Union, parliamentarians, national human rights institutions and civil society organizations. The Government of Benin proposed the establishment of an African observatory on the death penalty. The declaration adopted at the end of the Conference called upon all members States of the African Union, inter alia, to adopt the draft of the additional protocol to the African Charter on Human and Peoples' Rights, which provides for the abolition of the death penalty in the region. It also highlighted the importance of national human rights institutions in the abolition of the death penalty and urged those institutions to monitor, document and report death penalty and execution cases to the African Commission on Human and Peoples' Rights.

H. The death penalty as a foreign-policy theme

62. In their submissions for the present report, several States indicated that the universal abolition of the death penalty was a key foreign-policy objective.

[19] See http://register.consilium.europa.eu/pdf/en/13/st08/st08416.en13.pdf.

Argentina, Bosnia and Herzegovina, France, Finland, Italy, Israel, Lichtenstein, Lithuania, Mexico, Portugal, Spain, San Marino, Switzerland and the United Kingdom referred to their initiatives at various intergovernmental forums. Some of them also underscored that international assistance contributed to, and was very important for, the universal abolition of the death penalty.[10] With the support of France, Norway, Spain and Switzerland, the fifth World Congress against the Death Penalty was organized in June 2013. In the declaration adopted at the end of the Congress, the Congress, called upon intergovernmental and international organizations to increase their cooperation with States and civil society to promote the universal abolition of the death penalty.[20]

VII. Conclusion and recommendations

63. **Substantial progress has been made towards the universal abolition of the death penalty since the adoption of resolution 67/176 by the General Assembly. Currently, approximately 160 of the 193 Member States of the United Nations have abolished the death penalty or introduced moratoriums, either in law or in practice. States should go beyond simply ceasing executions and aim for a suspension of capital punishment for all who might be, or have been, sentenced to death. National prosecutors may consider no longer seeking the death penalty. Judges may consider not imposing it. In this regard, the highest judicial bodies may consider issuing judicial directives or sentencing guidelines, as appropriate. These initiatives should lead to the full abolition of the death penalty.**

64. **Clemency, pardons and commutations remain critical to the process of the abolition of the death penalty. As stipulated in article 6(4) of the International Covenant on Civil and Political Rights, anyone sentenced to death should have the right to seek pardon or commutation of the sentence. Heads of State and Government and other responsible State authorities should exercise their constitutional and/or legal authority to commute or pardon death sentences.**

65. **States that have abolished the death penalty should not reintroduce it. In that regard, it is critical for States that have not yet acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights to do so. The ratification of the Optional Protocol bears great international significance by opening the way for independent and international supervision to ensure that State parties comply with their abolition commitment. Furthermore, the ratification of the Optional Protocol acts as a means for States to establish their abolitionist stance through international law, and thus advances the universal abolition of the death penalty.**

66. **States that still apply the death penalty should comply with the international human rights standards, as stipulated in article 6 of the International Covenant on Civil and Political Rights. In particular, in States that have not abolished the death penalty, capital punishment may only be imposed for intentional killing and may not be mandatory in such cases. The death penalty should not be imposed for "drug offences", "consensual or non-consensual adult sex", "adultery," "sodomy," "blasphemy" or any other acts that do not meet the threshold of "most serious crimes". States should take**

[20] See www.fiacat.org/final-declaration-for-the-5th-world-congress-against-the-death-penalty.

all necessary measures to immediately suspend the use of the death penalty for crimes committed by persons under the age of 18 and to apply all appropriate measures for amending their laws in accordance with article 37 of the Convention on the Rights of the Child.

67. States should also adhere to fair trial guarantees in capital cases. Mass trials, marred by procedural irregularities and non-compliance, pose the risk of violating international human rights standards for fair trial guarantees and other safeguards. In addition, retentionist States must carry out capital punishment in a way that causes the least possible physical and mental suffering.

68. States that have received an extradition request on a capital charge should reserve explicitly the right to refuse extradition in the absence of effective and credible assurances from relevant authorities of the requesting State that the death penalty will not be carried out. The requesting States should provide and respect such effective and credible assurances, if requested to do so.

69. It is important for States to provide up-to-date and accurate global figures on the application of the death penalty. There is a continued lack of transparency on the part of some Governments concerning the number and characteristics of individuals executed, with some States classifying death penalty data as state secrets. States should refrain from executing in secrecy and strive to take all measures necessary to guarantee access to information on the death penalty, including information on advance notice to family members regarding the date of execution.

70. The international community should strive for the universal abolition of the death penalty. In particular, departments and offices of the Secretariat, the bodies and organizations of the United Nations system, regional human rights organizations, intergovernmental bodies and non-governmental organizations should continue and strengthen their support to States in pursuing the abolition of the death penalty.